IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5000 OF 2007

Sayad Kadir Amir Jan ....Petitioner
V/s
The State of Maharashtra & Ors..... ....Respondents.

Ms.Bobby Malhotra, Adv. For the petitioner.
Mr.S.K.Chincholikar, AGP For the respondent Nos.1, 2 & 4.

CORAM: A.P.DESHPANDE, J.
20/9/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

The petitioner is carrying on business of lodging and boarding for which he has obtained the requisite license for public entertainment. A show cause notice was issued to the petitioner by respondent No.2 calling upon the petitioner to show cause why his license should not be canceled for the reason stated in the show cause. The petitioner replied to the show cause notice and denied the allegations adverse to him. After considering the reply respondent No.2 passed an order canceling the license dated 3.10.06. Aggrieved by the order passed by respondent No.2 canceling the license the petitioner preferred an appeal before the Minister, Home Department and dismissal of the said appeal has given

rise to filing of present writ petition.

2. Learned counsel for the petitioner has pointed out that the impugned order passed by the Minister is ex-parte order and the same is unsustainable in law in as much as the petitioner had made a request for grant of adjournment on account of his illness and without considering the said application which was duly received by the office of respondent No.1 the petitioner was proceeded ex-parte. By a letter dated 3.3.07 respondent No.1 had informed the date of hearing to the petitioner and the hearing was schedule on 26.4.07 at 1.00 a.m. The petitioner by a letter dated 24.4.07 sought an adjournment on the ground of his illness. The letter seeking adjournment dated 24.4.07 was received in the office of respondent No.1 on 25.4.07 whereas the case was fixed for hearing on 26.4.07. It appears that the adjournment application was not placed before the concerned Minister and hence he has chosen to proceed with the appeal ex-parte and by dismissing the appeal upheld the order passed by the Commissioner. Learned counsel for the petitioner submits that the petitioner's right to carry on business stands infringed by the impugned order without affording an opportunity of being heard to the petitioner. As the impugned order seriously affects the petitioner' s fundamental right it is submitted that the matter be remanded back to respondent No.1 for rehearing and afresh decision in the appeal. The learned additional government pleader submits that the adjournment

application dated 24.4.07 does not seem to have been placed before the concerned Minister inadvertently by concerned clerk and thus the petitioner's appeal came to be decided ex-parte. Learned additional government pleader submits that if the matter is remanded back the Minister shall hear the petitioner and decide the appeal afresh. Hence in the interest of justice the impugned order dated 14.6.07 passed by the Minister (Home) is quashed and set aside. The matter is remanded to respondent No.1 for denovo hearing and afresh decision in the matter. Needless to mention that the respondent No.1 shall decide the appeal after affording reasonable opportunity of hearing to the petitioner. I hope and trust that the Minister (Home) shall decide the appeal as expeditiously as possible and preferably within a period of six weeks from today. Rule made absolute in above terms.

20.9.07